

## **NOTICE OF PROPOSED SETTLEMENT**

TO: All current and former Employees of Semper Blue Professional Services, Inc., Employed as a Compliance or Security Officer at Any Time from December 7, 2015 to present.

FROM: Andrew B. Protzman and Benjamin Stelter-Embry, Protzman Law Firm, LLC, Counsel for Plaintiff.

RE: Proposed settlement of class-action lawsuit filed under the Fair Labor Standards Act and the state wage and hour laws against Semper Blue Professional Services, Inc.

This Notice is provided in connection with a lawsuit pending in the United States District Court for the Western District of Missouri, Western Division (“the Court”). You are receiving this notice because you submitted a Consent to Join form and fall within the definition of the plaintiff class as set forth in this notice as a current or former employee of Semper Blue Professional Services. **The lead plaintiff, Joshua Springer, and the Defendant have reached an agreement to settle this case under the terms described below, subject to approval by the Court.** The Court has reviewed the terms of the proposed settlement and has authorized the sending of this notice but has made no final determination on whether to approve the settlement or the allocation of proceeds.

This notice serves four purposes:

1. it informs you of the terms of the proposed settlement and proposed allocation of settlement proceeds;
2. it gives you information about the lawsuit to help you evaluate the fairness of the settlement;
3. it advises you that your rights may be affected by the settlement and allocation; and
4. it tells you what to do if you want to express support for or opposition to any aspect of the settlement or allocation.

**The court has scheduled a “Fairness Hearing” for January 21, 2020, at 1:30 p.m., before Judge Beth Phillips, Chief Judge of the United States District Court for the Western District of Missouri, Western Division, 400 E. 9<sup>th</sup> St., Kansas City, Missouri 64106 to review the proposed settlement and allocation of proceeds.** The Court will consider any objections to or arguments in favor of the proposed settlement and allocation at the Fairness Hearing. You are welcome to submit an objection and/or attend the hearing, but you are not required to do so. Objections must be filed or received no later than January 7, 2020. All objectors who wish to appear at the hearing must send written notice of their intention to appear to the same address on or before the same date. Additional details are outlined below.

## **1. Description of the Lawsuit**

On December 7, 2018, Plaintiff Joshua Springer filed this lawsuit against Semper Blue Professional Services, Inc. (“SB Pro”) in the United States District Court for the Western District of Missouri. Plaintiff alleged that he was employed by SB Pro as a security officer and that SB Pro violated the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. (“FLSA”) and state wage and hour laws in the following regards: (1) by routinely requiring him to work in excess of 40 hours per week, but failing to pay him at the rate of one-and-a-half times his regular rate of pay for any overtime hours, as required by the FLSA and (2) improperly adjusting his time records. Plaintiff also alleged that SB Pro’s failure to compensate him for overtime work and other hours as required by the FLSA was knowing, willful, intentional, or done in bad faith. Plaintiff sought damages for unpaid overtime, plus liquidated damages in an amount equal to the unpaid overtime, as well as attorney’s fees and costs.

SB Pro has denied that it violated the FLSA or state wage and hour laws. In addition, SB Pro has denied that it altered any time records. SB Pro has asserted that it acted in good faith and paid all wages due to its employees. In addition, SB Pro has denied that any current or former employees are entitled to any additional compensation or other relief.

## **2. Composition of Plaintiff Class and Collective Action**

Plaintiff has sued on behalf of himself and also on behalf of all other similarly situated employees of SB Pro, specifically including:

**All individuals employed by SB Pro as security or compliance officers at any time within the three years prior to December 7, 2018.**

You are receiving this notice because you filed a Consent to Join this lawsuit and are an Opt-in Plaintiff in this action.

## **3. Your Right to Participate in the Proposed Settlement**

To participate in the proposed settlement, you must have “opted in” by filing a consent to join the lawsuit. If you filed such a form, you are a member of the Plaintiff class, and your legal claims under the FLSA (if any) will be affected by the final settlement of this action.

The parties agree that the class consists of the Named Plaintiff and forty-five (45) Opt-In Plaintiffs. After review of the applicable payroll and time keeping records, the parties agree that thirty-nine (39) of the Opt-In Plaintiffs are not entitled to damages because they either did not have any unpaid overtime and/or they accepted a settlement administered by the United States Department of Labor. Therefore, merely because you filed a Consent to Join form does not mean that you will receive any payment under the proposed settlement.

#### **4. Terms of the Proposed Settlement**

The Named Plaintiff and one additional Opt-In Plaintiff participated in mediation of this case on August 14, 2019, along with authorized representatives of SB Pro. At the conclusion of the mediation process, the parties reached an agreement to settle this case. The terms of the proposed settlement, including the proposed allocation of the settlement proceeds, include the following:

- (A) SB Pro will make a payment in the gross amount of \$50,480 in full settlement of the case. The parties will allocate the settlement proceeds as follows:
  - (1) \$38,000 to Protzman Law Firm for attorneys' fees and expenses;
  - (2) \$9,480 to be distributed among the seven plaintiffs in the manner described in Section 5 below;
  - (3) \$3,000 as compensation to Joshua Springer for his service as Named Plaintiff.
- (B) For those individuals who receive a payment under the proposed settlement, the parties will ask the court to approve treatment of 50% of the total amount as backpay, and 50% as payment for liquidated damages. SB Pro will make regular payroll withholdings for state and federal income taxes, Social Security, and Medicare on the amounts treated as backpay. No withholdings will be made on the portion of the settlement proceeds that represent liquidated damages although these payments may be subject to income tax as explained below.

Your 2019 W-2 form from SB Pro will include the payments treated as backpay, as well as any other wages you receive from SB Pro in 2019. You will also receive a 1099 form from SB Pro for 2019 reflecting the liquidated damages portion of your settlement payment and any service/incentive payments, if applicable, as "non-wage income." W-2s and/or 1099 forms will only be issued to the extent required by law.

**PLEASE NOTE: Any amount received from the settlement of this lawsuit is taxable income even though some is "non-wage" income. Neither Plaintiff's attorney, the Defendant's attorney, nor any representative of SB Pro is providing any advice regarding the tax consequences of the settlement payments beyond this general information. You are strongly encouraged to seek the advice of a CPA, tax lawyer or other competent professional to appropriately account for any settlement payments on your 2019 income tax returns.**

#### **5. Method of Distribution and Factors Affecting Distribution**

SB Pro will notify the members of the Settlement Class of the proposed settlement by mailing each individual a letter via first class mail.

**Individuals Receiving Payment.** A total of forty-six (46) individuals, including the Named Plaintiff, have opted into this lawsuit. Based on our calculations, seven (7) Plaintiffs will receive payments under the proposed settlement.

If we have determined that you are not owed any backpay, your letter will notify you of that fact, and you will not be entitled to any additional payments from the proposed settlement.

**How Proposed Distributions to Individuals Were Determined.** Plaintiff's counsel reviewed SB Pro's payroll records, schedules, and work records to determine whether individuals receiving this notice were paid all of the compensation to which they were entitled under the FLSA between December 7, 2015 and December 7, 2018.

Proposed distributions for the Federal claims are based on actual personnel and payroll records. Each person's proposed distribution is based on the number of improperly calculated overtime hours for each Opt-In Plaintiff who had unpaid overtime and did not already accept a settlement administered by the United States Department of Labor. Some Opt-In Plaintiffs may also receive a pro rata share based on consideration of the following factors: (1) dates of active employment and (2) and total number of hours worked at SB Pro.

## **6. Settlement Fairness Hearing**

**The Court has scheduled a hearing for January 21, 2020 at 1:30 p.m. to decide whether the settlement and proposed allocation are fair, reasonable, and adequate.** The Fairness Hearing will be held at the United States District Court for the Western District of Missouri, 400 E. 9<sup>th</sup> Street, Kansas City, Missouri 64106 before Chief Judge Beth Phillips. This hearing is open to the public and you are welcome, but not required, to attend.

You do **not** need to attend to receive payment under the settlement. You also do **not** need to attend to make a comment about or to raise any objection to, the proposed settlement. You may do either by filing a written document with the Court. **However, if you would like to be heard during the Fairness Hearing or if you have any comment or objection to any part of the proposed settlement or allocation, you must notify the Court in writing, to be filed or received no later than January 7, 2020.** To do so, you must submit a signed letter to the Court setting forth your position. Any letter submitted to the Court must include the following information: (1) the caption of the case (Joshua Springer v. Semper Blue Professional Services, Civil Action No. 4:18-CV-00968-BP); (2) your full name and address; (3) the dates you worked for SB Pro and what position(s) you held with SB Pro; and (4) the specific grounds for your objection or other comments about the proposed settlement.

**The deadline for submitting comments or objections to the Court is January 7, 2020.** Your correspondence must be received by the Court or postmarked no later than this deadline to be considered. Any correspondence to the Court should be addressed as follows: Clerk of the Court, United States District Court, 400 E. 9<sup>th</sup> Street, Kansas City, Missouri 64106. Any letter, comment or objection timely filed with the Court will be made part of the public record in this case and will be considered by the Court in making the final settlement approval decision.

## **7. Your Option Regarding Legal Representation**

The Court has approved the following attorneys to serve as counsel to the Plaintiff class:

Andrew Protzman  
Benjamin Stelter-Embry  
PROTZMAN LAW FIRM, LLC  
1100 Main, Suite 2430  
Kansas City, Missouri 64105

You have the right to be represented in this matter by (1) the attorneys for the named Plaintiff (at no expense to you), (2) an attorney of your own choosing (at your own expense), or (3) yourself (that is, you may speak or file documents on your own behalf without an attorney, also known as representing yourself pro se). If you wish to represent yourself or to be represented by an attorney other than the Protzman Law Firm at the fairness hearing, you or your own attorney must file a document on or before January 7, 2020, indicating your intent. You may include your statement regarding representation with your comment or objection, or you may file a separate notice of appearance. Absent such a filing by January 7, 2020, you will be represented by the attorney representing the Named Plaintiff as class representatives.

## **8. Further information**

If you have any questions about the settlement, you may contact the Protzman Law Firm at (816) 421-5100, or on the internet at [www.protzmanlaw.com](http://www.protzmanlaw.com). Copies of the settlement documents and other information can be obtained by calling, writing or e-mailing Plaintiff's counsel as follows:

Benjamin Stelter-Embry  
PROTZMAN LAW FIRM, LLC  
1100 Main, Suite 2430  
Kansas City, Missouri 64105  
Phone: 816-421-5100  
Fax: 816-421-5101  
Email: [ben@protzmanlaw.com](mailto:ben@protzmanlaw.com)  
[www.proztmanlaw.com](http://www.proztmanlaw.com)

Telephone calls will generally be received: Monday through Friday, 8:30 a.m. – 5:00 p.m., CST. Telephone messages may also be left after hours on the firm's voicemail.

## **9. The Court's Authorization of this Notice**

The contents of this Notice have been reviewed and authorized by Beth Phillips, Chief Judge of the United States District Court for the Western District of Missouri. Judge Phillips has not yet made a final determination about the validity of the proposed settlement.

**Do NOT contact Judge Phillips or other court personnel about this matter, other than by filing a comment, objection, or notice of appearance with the Clerk of the Court. The Court must remain impartial and cannot make any comment on your rights other than as set forth in this Notice.**

For further information about your rights, please contact the named Plaintiff's attorney listed in Section 8 above, or any other attorney of your choice.

#### **10. Protection Against Retaliation**

The Fair Labor Standards Act prohibits anyone from retaliating against you in any manner for your participation in this lawsuit.

Date of Notice: \_\_\_\_\_